

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAFAEL SOTO,

Plaintiff,

-against-

Index No.
12 CV 4241
(MKB) (VVP)

THE CITY OF NEW YORK, COUNTY OF KINGS,
DISTRICT ATTORNEY CHARLES J. HYNES,
DETECTIVE DANIEL BONILLA, POLICE OFFICER
ADAM FEDER, ASSISTANT DISTRICT ATTORNEY
JOHN GIANNOTTI, ASSISTANT DISTRICT ATTORNEY
LINDSAY GERDES, LIEUTENANT CHRISTOPHER
MARROW, and DETECTIVE BRIAN MEICHSNER,
Defendants.

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January 16, 2014
11:25 p.m.

EXAMINATION BEFORE TRIAL of ASSISTANT
DISTRICT ATTORNEY LINDSAY GERDES, one of the
Defendants here, taken by Plaintiff, held at
225 Broadway, New York, New York, pursuant
to Order, before a Notary Public of the
State of New York.

HARRIET BEIZER ASSOCIATES
'THE VERBATIM REPORTING SERVICE'
70-50 AUSTIN STREET
FOREST HILLS, NEW YORK 11375-4252
(718) 544-4199

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2 A P P E A R A N C E S:

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5 THE LAW OFFICE OF GREGORY P. MOUTON, JR.

6 Attorneys for Plaintiff

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8 New York, New York 10007

9 BY: GREGORY P. MOUTON. JR., ESQ.

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12 MICHAEL A. CARDOZO,

13 CORPORATION COUNSEL

14 Attorneys for Defendants

15 100 Church Street

16 New York, New York 10007

17 BY: BRIAN C. FRANCOLLA, ESQ.

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S T I P U L A T I O N S

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IT IS HEREBY STIPULATED AND AGREED by
and between the attorneys for the respective
parties hereto that the sealing, filing and
certification of the transcript of the
within examination before trial be, and the
same hereby are waived.

IT IS FURTHER STIPULATED AND AGREED
that said transcript may be signed and sworn
to before any Notary Public or Commissioner
of deeds with the same force and effect as
if signed and sworn to before an officer of
this Court.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the form
of the questions, are reserved to the time
of the trial.

1 L. GERDES, ESQ.

2 address?

3 MR. FRANCOLLA: I could
4 assert an official information
5 privilege.

6 THE WITNESS: Do you have
7 a copy of the e-mail?

8 MR. MOUTON: It's
9 somewhere in the discovery.

10 Are you directing her not
11 to answer?

12 MR. FRANCOLLA: Do you
13 have an issue giving your work
14 e-mail address?

15 THE WITNESS: No.

16 MR. FRANCOLLA: Okay. Go
17 ahead.

18 A I would imagine that it
19 would have been on the e-mail that I gave
20 you, but gerdesl@brooklynda.org.

21 Q Do you recall receiving an
22 e-mail from the victim for the underlying
23 criminal matter?

24 A Yes.

25 Q When did you receive that

1 L. GERDES, ESQ.

2 e-mail?

3 A I can't remember the exact
4 date, as I testify here today. The
5 e-mail is dated though.

6 Q The victim in this matter
7 was Masahira Yoshida?

8 A Correct.

9 Q Other than the one e-mail
10 that's been disclosed to us, do you
11 recall receiving any other e-mails from
12 the victim related to his abduction and
13 robbery on October 20, 2011?

14 A That's all I recall.

15 Q Have you ever searched your
16 e-mail to see if you have any other
17 documents related to this incident?

18 A No. Relating to this
19 incident, or relating to e-mails from the
20 victim?

21 Q This incident, generally.

22 A I have no idea how I would
23 go about searching my e-mail for e-mails
24 relating to an incident in general.

25 Q Have you searched for

1 L. GERDES, ESQ.

2 you questions about each specific one;
3 okay?

4 A Isn't that what the record
5 is for? I mean, because I don't want to
6 feel like you forget to tell me one of
7 the things I just said on the record.

8 Q If I forget to tell you,
9 that's my fault. I just want to have the
10 information about it so that I can ask
11 you about it.

12 A Okay.

13 Q Let me just take a minute
14 and write it up.

15 A Okay.

16 Q My understanding, just as a
17 brief synopsis, is that Soto had
18 Yoshida's address. Soto had knowledge of
19 the \$100,000 in Yoshida's safe. That
20 Yoshida had gone with Jonathan on the
21 route for one day. That he did not tell
22 Jonathan his address. He didn't tell him
23 about the money. That he did not take
24 Jonathan to his home address.

25 Dickinson said that there

1 L. GERDES, ESQ.

2 was a third person. The van was
3 registered to Soto. Soto was trying to
4 unload his route. Dickinson knew Soto.
5 Mena had his own car, but decided to use
6 Soto's van, and they had covered the
7 plates so as not to trace the car back to
8 Soto.

9 MR. FRANCOLLA: I'm going
10 to object to the extent that
11 this information has already
12 been provided.

13 You can answer.

14 A There's two things. I
15 never said that Yoshida never told Mena
16 about the money.

17 Q Okay.

18 A Mr. Yoshida wasn't sure
19 whether or not he told Mena about that,
20 but I knew he didn't tell Mena about his
21 address. Yoshida was, basically, saying,
22 in so many words, there's only one person
23 who knew both of those things. In his
24 mind, that's what he's telling me.

25 He said that he filled out

1 L. GERDES, ESQ.

2 this Mr. Route paperwork. So he's
3 thinking that Soto, obviously, has this.
4 He also had spoken to Soto multiple times
5 on the telephone, and Soto was supposed
6 to come meet him at Mr. Route's once and
7 never showed.

8 The other thing that was,
9 kind of, important is that I was, kind
10 of, getting an impression that certain
11 things with Soto were, like, a little
12 fishy, because Mr. Yoshida was also
13 telling me that the route -- the reason
14 why the deal fell through was because
15 Soto couldn't get him the numbers that he
16 wanted to substantiate for the route.

17 So, really, the route
18 wasn't worth what Soto was saying that it
19 was worth, and what he was trying to sell
20 the route for, because he could never
21 back up the numbers. Like, he provided
22 him with certain numbers that he said the
23 route made. That Mr. Yoshida was asking
24 for the details, and he never got him
25 that.

1 L. GERDES, ESQ.

2 Route's that he had \$100,000 in his safe.

3 Q Well, here is my question:

4 On October 20, 2011, did the victim tell
5 you how much Rafael Soto had listed the
6 route for?

7 A I can't remember. I knew
8 it was at least \$100,000. I knew it was
9 at least \$100,000.

10 Q Did he also tell you that
11 the terms of any potential agreement was
12 that the route cannot be purchased with
13 financing, and that it had to be a cash
14 transaction?

15 A I don't know if I knew that
16 that day. At some point I learned that,
17 but I don't know at what point I learned
18 that. I don't think they all had to be
19 purchased with \$100,000 from the safe. I
20 don't think they -- you know, that was
21 the difference there.

22 Q On October 20, 2011, you
23 knew that potentially Jonathan Mena knew
24 or had been told by Mr. Yoshida that he
25 had \$100,000 in a safe in his apartment?

1 L. GERDES, ESQ.

2 MR. FRANCOLLA: Objection.

3 You can answer.

4 Characterization.

5 A I don't know if he told me
6 that that day.

7 Q Did you learn that prior to
8 Mr. Soto's arrest?

9 MR. FRANCOLLA: Learn
10 what?

11 MR. MOUTON: That Mr.
12 Yoshida had possibly told
13 Jonathan that he had \$100,000
14 in his safe in his apartment.

15 A Yes, I believe I learned
16 that at some point before the arrest. I
17 don't know what point.

18 Q You also indicated that you
19 learned that Mr. Yoshida had gone out for
20 one day with Jonathan on his route; is
21 that correct?

22 A Right.

23 Q Did Mr. Yoshida indicate to
24 you that he had taken any notes while he
25 was on that route?

1 L. GERDES, ESQ.

2 A I don't know if he told me
3 he took the notes while he was physically
4 on the route, but I did know that he took
5 notes, and I saw the notes that day at
6 the precinct.

7 Q So you did see his notes?

8 A Yes.

9 Q On those notes, did you
10 view or see where Mr. Yoshida had written
11 down numbers and figures about various
12 deliveries that Jonathan Mena had made
13 during his time on the route?

14 A I didn't know exactly what
15 all -- the main thing with the notes that
16 day was that he knew it had Jonathan's
17 phone number on there. He was trying
18 to -- we were trying to get Rafael Soto's
19 phone number.

20 I think, if memory serves
21 me correctly, he was trying to look for,
22 like, the Mr. Route paperwork and Rafael
23 Soto's number, but it was more pertaining
24 to the phone numbers.

25 As I sat at the precinct on

1 L. GERDES, ESQ.

2 these routes. He didn't owe the bank
3 money on this route. If he sold this to
4 someone, he was going to have in excess
5 of \$100,000, basically, in his pocket,
6 minus the percentage that went to the
7 broker.

8 Q When did you speak with the
9 broker in relation to Mr. Soto's arrest?

10 A After Soto's arrest and
11 after Soto testified in the Grand Jury.

12 Q What you're saying about
13 your belief that he needed money was
14 simply an assumption, and you had nothing
15 to support that assumption; is that
16 correct?

17 MR. FRANCOLLA: Objection.
18 She explained that she did.

19 MR. MOUTON: At the time
20 before he was arrested.

21 MR. FRANCOLLA: When you
22 say she had nothing, she
23 explained why she thought
24 that. If you disagree with
25 it, that's your position, but

1 L. GERDES, ESQ.

2 Q Did you investigate before
3 or after Mr. Soto was arrested?

4 A Before.

5 Q My question then is: As
6 part of your investigative acts, did you
7 review documents in evidence that the
8 police had gathered or that you had
9 gathered?

10 A Yes.

11 Q In the case of documents
12 that the police had gathered, as a matter
13 of practice, did you go through
14 everything yourself to determine what was
15 pertinent, or did you allow the officers
16 to determine what was pertinent before
17 you looked at it?

18 A I can't answer the question
19 as a whole. If you want to ask me, like,
20 about certain things. Overall, in this
21 case, they, kind of, found things and
22 then showed me or presented it to me once
23 they, you know, discovered it or
24 recovered it or collected it.

25 This wasn't a case where

1 L. GERDES, ESQ.

2 I -- you know, I never personally went to
3 Home Depot. I didn't go to the TARU.
4 So, I was, basically, being kept informed
5 of information as it was coming to light.
6 Also, speaking to the victim and learning
7 things from the victim. I'm trying to
8 answer as best I can.

9 Q I understand. For
10 instance, in the case of this voucher,
11 you indicated that you didn't
12 independently look through all the
13 documents even though you knew that these
14 documents existed; correct, before Mr.
15 Soto was arrested?

16 A Correct.

17 Q My question to you then is:
18 For the rest of the vouchers and
19 vouchered evidence that the police
20 collected, did you independently go
21 through each voucher, or did you only go
22 through that voucher if the police said,
23 hey, look, here is some information that
24 is pertinent to this investigation?

25 A Well, I saw a lot of it

1 L. GERDES, ESQ.

2 Q Did you direct anyone to do
3 that?

4 A No, I did not.

5 Q Do you know if any of the
6 detectives went to Home Depot to do that?

7 A Whether or not they took a
8 zip tie from the scene and asked Home
9 Depot if this zip tie was their zip tie?

10 Q Or compared it to the ones
11 that were on the shelf.

12 A Well, what I did was, I
13 looked at the video surveillance, which
14 shows the zip ties in Soto's hand, the
15 pack of zip ties.

16 So, you see the length.
17 You see what the packaging looks like.
18 It was clear packaging. You see that the
19 packaging was, basically, the same size.
20 When I say, "size," the length of the zip
21 tie.

22 Then I, myself, when I was
23 at the precinct, saw those zip ties. I
24 didn't see any serial numbers on the zip
25 ties or any stamps on the zip ties that

1 L. GERDES, ESQ.

2 said Home Depot, but I was able to do,
3 myself, a visual comparison of what Soto
4 had in his hands at the register.

5 Knowing that it was two
6 bags, also. Knowing then that two bags
7 were found in the van, two empty bags,
8 with the receipt, with the Home Depot
9 bag. You see them walking out with the
10 Home Depot bag.

11 So, you know, it's not like
12 they just walked out, oh, we don't need a
13 bag for these. They put them in a Home
14 Depot shopping bag and walked out. They
15 take the receipt, put the receipt in the
16 bag and walk out with those items. So, I
17 did a visual comparison of what I saw
18 Soto purchase versus the zip ties that
19 the police recovered.

20 Q So, the answer would be
21 that you don't know if the detectives
22 went to Home Depot to compare the zip
23 ties that were recovered to the ones that
24 Home Depot actually sells?

25 A Correct.

1 L. GERDES, ESQ.

2 before you direct me to a certain photo.

3 Q I believe you said that you
4 had five photos, and then you named the
5 photos; is that correct?

6 A Right. Go ahead.

7 Q Can you tell me what in D97
8 you believe or gives you reason to
9 believe that one of those persons
10 depicted there is Mena and one is Soto?

11 A I feel like when I did
12 this -- because you're asking me, when we
13 looked at the first -- basically, you
14 showed me the most grainy pictures from
15 the video first. Then, I'm the one who
16 asked you for all of the photos from the
17 video.

18 Q Sure.

19 A When I went about
20 identifying these two people, it's no one
21 picture by itself standing alone that I
22 made the identification on. It's no one
23 feature alone. It's everything as a
24 whole. It's not like this is a yearbook
25 picture of Rafael Soto.

1 L. GERDES, ESQ.

2 I've seen lots of video
3 surveillance. You never get video
4 surveillance really that's like them.
5 So, when I'm making this identification,
6 I'm looking at everything collectively
7 that I know about this case. When I'm
8 dealing with identification issues, in
9 general, you can't just look at the one
10 piece. It has to be the one piece in
11 association with the next.

12 So, to make my conclusion
13 that Rafael Soto is the person in the
14 black and Jonathan Mena is the person in
15 the hooded, kind of, grayish blue jacket,
16 I'm looking at everything. I'm looking
17 at the fact that the receipt for this
18 purchase is found in Soto's van. I'm
19 looking at the fact that when Soto showed
20 up at the precinct, he was wearing a
21 black leather jacket and a black hood.

22 If you look at Picture No.
23 D76, you can tell from this picture that
24 the material in the hood is different
25 than the jacket material. The light is

1 L. GERDES, ESQ.

2 reflecting differently telling me that
3 this is two different types of materials.

4 So, the person, you know,
5 whose van this receipt is in has this
6 very unique combination of outerwear
7 here. Not only does he have this unique
8 outerwear, he's with -- not a young girl,
9 not a young boy, not his wife. He's with
10 the man who was arrested in connection
11 with this van, wearing the exact same
12 jacket that he was arrested in.

13 I'm also looking at that
14 you could tell that Mena was taller than
15 Soto in the video. I knew that to be
16 true before he was arrested.

17 Q How did you know that to be
18 true before he was arrested?

19 A I believe they had some
20 pedigree information. I believe that to
21 be true. I should say that.

22 Q What was your basis for
23 that belief?

24 A I think, actually, what it
25 was, I saw his picture. I don't think I

1 L. GERDES, ESQ.

2 knew it to be a fact. I think that I
3 believed he was shorter.

4 I saw his picture, which
5 was a shot of his body, and he appeared
6 to be smaller in stature than Mena. I
7 saw Mena physically at the precinct.

8 Q Did you see a picture of
9 this entire body?

10 A No. I just said I think --
11 I thought I said his upper. Like,
12 basically, from his shoulder up. He
13 appeared to have a smaller stature, and
14 the person in here appeared to have a
15 smaller stature. So, it's all of these
16 things together that are leading me to
17 draw what I believe is the one
18 inescapable conclusion that this is Mena
19 and Soto.

20 So, it's not just this one
21 picture by itself. If you look at the
22 hairline, it looks to be similar. The
23 hairline, the hair length.

24 Q The hairline in D97?

25 A D97 and D72, basically.

1 L. GERDES, ESQ.

2 particular photograph, were the two
3 photographs on that sheet of paper the
4 same as this photograph, or were they
5 different?

6 A I believe they were the
7 same. I mean, they were definitely dated
8 10/21. I believe they were the same, but
9 the quality is off here.

10 Like I said, there were
11 two. So, I don't know if they were the
12 exact same, or one showed a little bit
13 more of an inch than the other one.

14 Q Let me ask you this
15 question: From that picture, can you
16 tell me what is unique about Mr. Soto's
17 hairline?

18 A He doesn't have a ponytail.
19 He does not have a hairline that starts
20 in the middle of his forehead. He does
21 not have the same type of receding
22 hairline like you do. He does not have
23 bangs that hang down on his forehead like
24 Brian does. He has brown hair, and the
25 length appears to be the same length as

1 L. GERDES, ESQ.

2 this guy.

3 Again, I'm not just
4 looking -- it's identification by
5 association, when I am summing up the
6 jury on things like this. You can't look
7 at one thing by itself. It's not like
8 I'm saying, oh, because his ear is shaped
9 like this, I know it's Rafaela Soto.

10 You know, it's everything.
11 That he's next to Mena. That he's buying
12 these zip ties and getting in the van
13 that's registered to him. That he's got
14 the sweatshirt that's made of a different
15 material than the jacket.

16 There's things that I could
17 see how certain people may have a
18 different opinion on, but this one seems
19 like a ground ball when we know
20 everything else. That's not just looking
21 at this.

22 Again, I don't think if you
23 necessarily present this picture,
24 Defendant's Exhibit J, and D97, to a
25 stranger on the street and ask, is this

1 L. GERDES, ESQ.

2 the same man who, you know, is on the
3 left-hand side of D97? It very well
4 could be.

5 I don't think you could
6 rule it out. I don't think you could
7 necessarily say, no, I affirmatively know
8 it's a different man. Very similar.
9 Again, that's not what -- you got to
10 evaluate all of it, and that's what I
11 did.

12 Q Now, in that picture that's
13 marked as Defendant's Exhibit G, do you
14 see any receipts or papers scattered
15 about in the back of this van?

16 A Not in the back of the van.
17 I think you have pictures also of the
18 front of the van.

19 Q Yes, I do.

20 MR. MOUTON: Just give me
21 one moment.

22 (Brief recess was taken.)

23 MR. MOUTON: Mark this as
24 Plaintiff's 9, please.

25 (Laser Photocopied Photograph